

So Ordered.



Patricia C Williams)
Patricia C Williams

**Patricia C. Williams
Bankruptcy Judge**

Dated: September 5th, 2013

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re: DC Case No. 12-cv-00646-RMP

LLS AMERICA, LLC, Case No. 09-06194-PCW11

Debtor(s).

BRUCE P. KRIEGMAN, solely in his capacity as court-appointed Chapter 11 Trustee for LLS America, LLC,

DC Case No. 12-cv-00646-RMP

Case No. 09-06194-PCW11

Adversary No. 11-80159-PCW11

REPORT AND RECOMMENDATION RE: FINAL JUDGMENT

VS.

MONIQUE OLSEN,

Defendant(s).

Attached is the final judgment proposed to be entered by the plaintiff. The final

judgment is based upon the court's Order Granting Motion for Summary Judgment

(ECF No. 72), which was entered August 20, 2013 due to defendant's failure appear

at the status conference regarding that motion or otherwise respond to said motion. It

is recommended that the District Court set a hearing to allow the defendant to

1 articulate whatever defenses she may have which would prevent entry of the final
2 judgment.

3 **Facts Relevant to the Entry of the Final Judgment**

4 Defendant Monique Olsen is the only named defendant in this adversary, which
5 was commenced July 16, 2011. The pleadings indicate that she was served with the
6 Summons and Complaint by international registered mail, with return receipt
7 requested, at the address of 6076 Golf Road, Agassiz, BC V0M 1A3, Canada, on
8 July 29, 2011 (Certificate of Mailing of Summons and Complaint, ECF No. 4). A
9 return mail receipt for that address is contained in the file with an unidentifiable
10 signature (ECF No. 5). The defendant filed an Answer (ECF No. 6) containing the
11 same Agassiz, BC Canada, address reflected in the Certificate of Mailing of Summons
12 and Complaint and return mail receipt (ECF Nos. 4 and 5, respectively).
13 Substantively, the Answer is a one sentence general denial.

14 This adversary proceeding docket contains a Notice of Scheduling Conference
15 and Certificate of Service of the same (ECF No. 7) to defendant on June 13, 2012,
16 which also contained a notice of a telephonic scheduling conference hearing for
17 July 16, 2013. The Certificate of Service states that the Notice of Scheduling
18 Conference was served on the defendant at the same address referenced above. The
19 defendant appeared telephonically at the scheduling conference on July 16, 2012. It
20 was “strongly recommended” that defendant obtain counsel. Defendant had not

1 responded to the plaintiff's FRCP 26(f) Conference Report and Discovery Plan (ECF
2 No. 8) and was directed to do so before the next hearing. A discussion occurred
3 regarding the withdrawal of reference and defendant was also advised to address that
4 issue prior to the continued scheduling conference. Defendant was informed that the
5 scheduling conference would be continued telephonically to August 27, 2012.
6 Defendant did not file any pleadings concerning the matters discussed nor appear at
7 the continued hearing.

8 On October 31, 2012, plaintiff filed a motion to consolidate (ECF No. 16) this
9 adversary, with adversary proceeding No. 11-80299 to determine the "common
10 issues" and attached thereto a Certificate of Service, which does not refer to this
11 defendant. An order was entered granting plaintiff's motion for consolidation on
12 November 30, 2012 (ECF No. 26).

13 The plaintiff filed a motion to withdraw reference (ECF No. 19) on
14 November 19, 2012, utilizing the "notice and hearing" procedure and allowing the
15 defendant 24 days to object to the motion. The Certificate of Service attached thereto
16 reflects that the motion was served on the defendant at same address referenced above.
17 No objection by the defendant was filed and the District Court entered an Order
18 Granting Motion to Withdraw Reference and Setting Trial Date on January 16, 2013
19 (ECF No. 2, District Court case No. 12-cv-00646-RMP).

1 The court entered on February 15, 2013, an Amended Case Schedule Order
2 relating to “non-common issues” (ECF No. 32), and the Bankruptcy Noticing Center’s
3 Certificate of Notice (ECF No. 33) states that the Amended Case Schedule Order was
4 served on the defendant at the same address referenced above. The court also entered
5 a Notice of Proposed Trial Setting Procedures (ECF No. 35) on March 20, 2013, and
6 the Bankruptcy Noticing Center’s Certificate of Notice (ECF No. 36) states that notice
7 was served on the defendant at the same address referenced above on March 22, 2013.

8 On April 10, 2013, plaintiff filed a motion to compel answers to discovery (ECF
9 No. 39), and on April 15, 2013, filed a notice of hearing regarding that motion (ECF
10 No. 41). The Certificates of Service attached to these pleadings state both were served
11 on the defendant at the same address referenced above. Plaintiff’s supporting
12 declaration (ECF No. 40) stated that the defendant had not responded to discovery
13 served on her on December 20, 2012, nor had she responded to the plaintiff’s letter of
14 March 7, 2013, stating that if no response was received by April 1, 2013 that the
15 plaintiff would file a motion to compel. Defendant did not file a response nor appear
16 at the hearing on plaintiff’s motion to compel held on May 9, 2013. The order granting
17 plaintiff’s motion to compel was entered on May 10, 2013 (ECF No. 46), but no proof
18 of service on the defendant appears on the docket.

19 On June 19, 2013, plaintiff filed a disclosure of experts on non-common issues
20 (ECF No. 48) and filed a Certificate of Service (ECF No. 49) stating that the plaintiff

1 served the disclosure of experts on the defendant at the same address referenced
2 above.

3 The plaintiff filed a Motion for Sanctions on June 26, 2013 (ECF No. 50)
4 against the defendant for her failure to respond to discovery and failure to comply with
5 the court's Order Re: Motion to Compel Discovery (ECF No. 46). The Certificate of
6 Service (ECF No. 53) filed the same date states that the motion and supporting
7 declaration were served on defendant at same address referenced above. The
8 supporting declaration stated that no response to the plaintiff's FRCP 26 Report had
9 occurred and defendant still had not provided discovery responses. The motion was
10 filed upon "notice and hearing" with any response due July 5, 2013, and a hearing date
11 scheduled on July 8, 2013 (ECF No. 52). That notice was served on the defendant at
12 the same address referenced above. Defendant did not file any response to the motion
13 nor appear at the hearing on July 8, 2013. An order granting the motion for sanctions
14 was entered on July 10, 2013 (ECF No. 57) and the Bankruptcy Noticing Center's
15 Certificate of Notice (ECF No. 59) states the order was served on the defendant at the
16 same address referenced above.

17 In the plaintiff's Motion for Summary Judgment filed July 25, 2013 (ECF No.
18 60), the plaintiff sought to prevent the defendant from introducing any evidence at
19 trial regarding the defendant's "good faith" or disputing the plaintiff's accounting. The
20 Certificate of Service (ECF No. 65) states that the motion was served on the defendant

1 at same address referenced above. A notice of a status conference (ECF No. 66)
2 scheduled for August 9, 2013 on the plaintiff's Motion for Summary Judgment was
3 served on July 26, 2013 at the same address referenced above (ECF No. 67).
4 Defendant did not appear at the telephone hearing on August 9, 2013.

5 On August 19, 2013, an order granting plaintiff's Motion for Summary
6 Judgment (ECF No. 72) was entered due to defendant's failure to appear at the hearing
7 or respond to the plaintiff's Motion for Summary Judgment. Based on that order, and
8 utilizing the notice and hearing procedure, the plaintiff served on the same address
9 referenced above a Notice of Presentment (ECF No. 73) of the final judgment on
10 August 21, 2013 (ECF No. 74). The notice stated that the judgment would be
11 presented to the bankruptcy court ex-parte for its recommendation for entry of the
12 judgment by the District Court unless a response was received from the defendant no
13 later than September 4, 2013. The Bankruptcy Noticing Center's Certificate of Notice
14 (ECF No. 75) was filed on August 21, 2013 reflecting service of same pleadings on
15 defendant at the same address referenced above.

16 The defendant responded to the notice of presentment of final judgment on
17 August 30, 2013 by filing another pro se answer (ECF No. 76). That second answer
18 contains the same address referenced above for the defendant and is four pages of
19 denials. Defendant also filed a declaration (ECF No. 77), which is similar to the
20 standard declaration filed regarding jurisdiction by numerous defendants in numerous

1 adversaries, but contains an additional statement denying that the defendant was
2 served with the Summons and Complaint.

3 **Recommendation**

4 The final judgment should be entered unless, at a hearing scheduled by the
5 District Court, the defendant is able to articulate any viable defense to the entry of the
6 final judgment.

7 ///END OF REPORT AND RECOMMENDATION///

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6 Attorneys to Bruce P. Kriegman, Chapter 11 Trustee

7

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 In Re:

11 LLS AMERICA, LLC,

12 Debtor.

2: 12-cv-12-00646-RMP

Bankruptcy No. 09-06194-PCW11

14 BRUCE P. KRIEGMAN, solely in his
15 capacity as court-appointed Chapter 11
16 Trustee for LLS America LLC,

Adversary No. 11-80159-PCW11

JUDGMENT

17 Plaintiff,

18 v.

19 MONIQUE OLSEN,

21 Defendant.

23 **JUDGMENT SUMMARY**

24 1. Judgment Creditor: Plaintiff Bruce P. Kriegman

25 2. Attorney(s) for Judgment Creditors: Daniel J. Gibbons,
26 Witherspoon Kelley

28 JUDGMENT - 1

S0756742

WK WITHERSPOON•KELLEY
Attorneys & Counselors

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3.	Judgment Debtor:	Monique Olsen
4.	Attorney for Judgment Debtor(s):	None
5.	Amount of Judgment:	\$340,278.42 CAD
6.	Amount of Interest Owed to Date of Judgment:	\$0.00
7.	Interest Rate:	0.11% per annum

JUDGMENT

Based on the Order Granting Motion for Summary Judgment, judgment in this matter is entered as follows:

1. Plaintiff Bruce P. Kriegman is awarded judgment against Defendant Monique Olsen in the amount of \$340,278.42 CAD, plus post-judgment interest at the rate of 0.11 percent (0.11%) per annum until paid in full.

Entered this ____ day of _____, 2013.

HONORABLE ROSANNA PETERSON

Presented by:

WITHERSPOON • KELLEY

/s/ Daniel J. Gibbons

Daniel J. Gibbons, WSBA No. 33036
Attorneys for Plaintiff

JUDGMENT - 2

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